

Mr. Carl Bildt
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7th of November, 2008

Dear Mr Bildt,

We understand that on 12 November a sub-committee of the Council of Europe Committee of Ministers will consider the future Convention on Access to Official Documents in the light of serious concerns about this draft treaty raised by the Parliamentary Assembly of the Council of Europe (Opinion No. 270 (2008) of 3 October 2008).

We wish to add our voices to those of the Parliamentary Assembly. In spite of not being formally consulted on the draft treaty (we learned about it from the civil society organizations that had been invited as observers), we as Information Commissioners from across Europe, having the responsibility for implementing national legislation on access to information/official documents, have written to the relevant bodies of the Council of Europe on a number of occasions over the past year. According to the reports we have of the relevant meetings, our suggestions for strengthening the text of the draft Convention to bring it into line with existing European standards were not given serious consideration.

We believe that given the importance of the right of access to official documents in modern European democracies, it is essential that this Convention not be adopted until there has been proper public debate about the problems identified by the Parliamentary Assembly.

To adopt a treaty which falls below prevailing European standards on the right of access to information seriously risks undermining this right, particularly in those European countries with relatively new access to information laws where the right is not yet firmly entrenched.

We therefore urge you, as the current Chair of the Council of Europe and given Sweden's long history of open government, to take note of these concerns and to establish a review of the key problems with the draft Convention, which are listed in the attachment to this letter.

We kindly request you to forward this letter to all members of the Committee of Ministers and the Group of Rapporteurs on Human Rights.

We remain at the disposition of the Council of Europe to provide further comment, information on comparative law and practice in this area, and additional drafting suggestions.

Yours faithfully,

Nataša Pirc Musar
Information Commissioner of the Republic of Slovenia

Peter Schaar,
Federal Data Protection and Information Commissioner, Germany

András Jóri
Parliamentary Commissioner for personal data protection and freedom of information, Hungary

Rodoljub Šabić
Commissioner for access to public information, Republic of Serbia

Janko Nikolovski,
President of Macedonian Commission for Access to Public Information

Signe Plūmīna,
Director of Latvian Personal Data Protection Inspectorate (in charge for freedom of information as well)

Viljar Peep
Director General Estonian Data Protection Inspectorate (in charge for freedom of information as well)

Graham Smith
Deputy Information Commissioner, United Kingdom

Kevin Dunion
Scottish Information Commissioner

Dr Thilo Weichert
the Commissioner for Data Protection and Freedom of Information of Schleswig-Holstein, Germany

Dagmar Hartge
Brandenburg Commissioner for Data Protection and Freedom of Information, Germany

ANNEX:

Problems with the Draft Convention:

The current draft of the Council of Europe's Convention on Access to Official Documents establishes a right to request "official documents" with no need to demonstrate a particular interest in the information requested, and at no charge for filing requests or for viewing documents. The draft, however, has numerous problems, which threaten to weaken the public's right to know:

1. **Narrow definition of “public authorities”:** The Convention fails to apply the right to know to the main functions of legislative and judicial bodies; it also does not apply to private bodies that perform public functions or operate with public funds. This falls below the standard of many of Europe’s existing access to information laws;
2. **No maximum time-limits:** the Convention does not set time-limits within which requests for information must be processed, in spite of the fact that most national laws have time limits;
3. **Weak appeals mechanism:** Requestors whose requests are denied or not answered should have a right to appeal to a review body that has the power to order disclosure of the requested official document. The draft Convention fails to provide this guarantee;
4. **Unclear definitions of what information can be requested:** the definition of “documents” in the draft Convention is weak. States are given the option to refuse access to information held in electronic databases is not “easily retrievable” or does not “logically belong together”. In the modern information age much government information is held in database so lots of information could be out of public reach if the Convention’s definition of documents/information is not improved.
5. **Secrecy for heads of state:** the draft Convention has a broad exception that allows for any communications with the head of state (including communications with government ministers/departments) to be kept secret. This reverses recent trends towards greater openness at the highest levels of government;
6. **No general statement on the right to information:** the Convention fails to state clearly that all official documents are in principle public and can be withheld subject only to the protection of other rights and legitimate interests. Lack of such a general statement reveals the lack of commitment to full openness by the drafters of the Convention.
7. **Unlimited Reservations:** at present, states signing the Convention are free to opt out of applying any provisions they want. This undermines the strength of the Convention as an international human rights treaty.